

MONTANA LEGISLATIVE HISTORY

Chapter 318 19 73

Bill H 402 S _____ Original bill & history c

H. Committee on Judiciary

Hearing Date(s) 2-1 ☒ c

2-2 ☒ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) 2-26 ☒ c

2-24 ☒ c

_____ c

_____ c

Did this bill originate in an interim committee? Yes No

Committee _____

Report _____

1973
HOUSE

JUDICIARY

COMMITTEE

92nd Legislative Assembly
43rd

Bill No.	Subject Matter	Date In	Hearing Date	Comments	Date Out	Committee Action	Final Action
HB 384	Requiring safe deposit companies etc. to inventory the contents of a safety deposit box, etc.	1/24/73	1/29/73	1/29/73 Passed for the day	2/2/73	Do Not Pass	Killed
HB 390	Regulating security deposits required by a landlord of residential premises for damages or nonpayment of rent or, etc.	1/24/73			2/5/73	Be Held Over	Retained
HB 395	Establishing a presumption that the receiver of stolen property knew it was stolen if it was obtained outside, etc.	1/24/73	2/2/73		2/5/73	Do Not Pass	Killed
HB 402	Permitting newsmen to refuse to disclose news sources.	1/24/73	2/1/73		2/2/73	Do Pass As Amended	Signed by Governor
HB 403	Creating a division of training coordination within the dept. of law enforcement and public safety, etc.	1/24/73	1/31/73		1/31/73	Do Pass As Amended	Governor
HB 409	Requiring new and transferred liquor licenses to be approved by the county commissioners and by governing body, etc.	1/25/73	2/2/73	Referred to another committee		Referred to another committee.	Killed

February 1, 1973

JUDICIARY COMMITTEE

The nineteenth meeting of the House Judiciary Committee was called to order in Committee Room 436 of the Capitol Building at Helena, Montana on Thursday, February 1, 1973 at 9:00 a.m. Representative John C. Hall, Chairman, presided. All members were present except Representatives Lucas and Warfield, both absent, excused.

Chairman Hall stated House Bills 402, 248 and 411 were scheduled for hearing today. Representative Hall stated that House Bills 402 and 411 would be considered together to which the chief sponsors agreed.

HOUSE BILLS 402 and 411 Representative Greely, chief sponsor of House Bill 402, summarized his bill stating his bill was very similar to House Bill 411. The disclosure of information law has been on the books since 1943. Have been recent problems with disclosure of information on news media. Feels there should be the same relationship between newsman and informant as there is between doctor and patient, lawyer and client.

Representative Bradley, District #11, summarized her bill #411 stating it is the result of conversations with newsreporters and University of Montana journalism school. She stated many reporters are subpoenaed and sent to jail because of failure to disclose information. This bill helps protect reporters and other newsmen from having to reveal source of information. She urged support of her bill.

Proponent Robert E. Miller of the Montana Press Association stated he was surprised at introduction of bills and welcomed both of them. He feels House Bill 411 is stronger. No further proponents. No opponents. The meeting was opened to questions from committee members and there were many. Representative Hall questioned the right to suppress information obtained and stated that with these bills the public must rely on information of reporters as they do on legislators. Representative Marbut stated there was no investigation of suppressed information, only published information. Chairman Hall pointed out that newsmen decide what will be news and what will not. Further discussion and then Chairman Hall closed the hearing.

HOUSE BILL 248 Representative Jim Burnett, chief sponsor, gave background on this bill which defines "board" and "state liquor store"; abolishing state liquor stores and providing for the retail sale of liquor in the original package. He stated part of purpose in entering this bill is economics. Wholesaler makes the money, retailer doesn't. Have brought in considerable amendments to propose.

EXECUTIVE SESSION, JUDICIARY COMMITTEE

Chairman Hall stated the committee had eleven bills to be considered. The meeting was called to order upon adjournment of the House of Representatives.

HOUSE BILL 248 Representative Marbut moved DO NOT PASS.

Representative Baucus seconded. Representative Hall read the proposed amendments that were brought in in prepared form. Representative Towe made a substitute motion amendments be adopted. Representative Brown seconded. Motion failed with Representatives Towe, Bell and Brown voting yes. Motion House Bill 248 DO NOT PASS carried with Representative Brown voting no.

HOUSE BILL 250 Chairman Hall stated he had spoken to Senator McKeon regarding all the no fault insurance bills. Stated his personal feeling is that it is rather pointless for either house to act on bills unless they work together. Suggested each house transmit to the other the bills it has unless strong objection at which time a joint judiciary committee meeting be held to work out the bills, committees could then report favored bill and kill the others and report out.

Representative Marbut moved House Bill 250 DO PASS. Representative Baucus and other seconded. Representative Towe proposed two amendments to this bill, stating he feels very strongly about them as well as this bill. Representative Baucus seconded motion of Representative Towe's motion to amend. Chairman Hall divided the vote to amend. The first proposed amendment failed. Representative Towe then stated that either both or neither amendments should be included and withdrew his motion to amend. The motion DO PASS carried with Representative Bell and McKittrick voting no.

HOUSE BILL 333 Representative Marbut moved DO PASS AS AMENDED as set forth in mimeographed sheet. Representative Warfield seconded. There were many points discussed among committee members, several substitute motions regarding amendment which failed and then committee reverted back to the original motion DO PASS AS AMENDED. Motion carried unanimously.

HOUSE BILL 384 Representative Towe passed out prepared list of amendments which were given to him by Representative Tierney but stated he couldn't speak intelligently about them. Representative Greely moved DO NOT PASS. Representative Baucus seconded. Motion DO NOT PASS carried with Representatives Brown and Towe voting no.

HOUSE BILL 402 Representative McKittrick moved DO PASS.

Representative Greely seconded. Representative Towe made a substitute motion to amend on page 1, line 15 after the word "cannot" by inserting the new material "without his consent, be examined as to any communication made to him in confidence for the purpose of proper publication nor shall he".

Page 4
(2/2/73 minutes)

Representative McKittrick seconded. Motion to amend carried unanimously.

Chairman Hall, without objection, moved to include the same above amendment on page 1, line 23 after the word "employed". No objection. Motion carried.

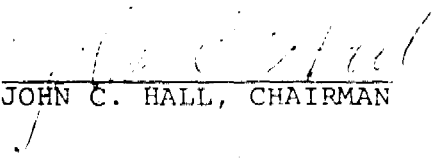
Representative Greely moved DO PASS AS AMENDED. Representative Towe seconded. Representative Marbut moved a substitute motion to delete the reference to "the legislature" on page 1, lines 15 and 16. Representatives Bell and Baucus are opposed. Motion failed with Representatives Bell, Marbut and Baeth voting yes. Representative Greely's motion DO PASS AS AMENDED carried with Representative Bell and Marbut voting no.

HOUSE BILL 411 Chairman Hall stated this bill remains necessary since committee passed House Bill 402. Representative Baucus moved DO PASS. Representative Greely seconded. Chairman Hall stated that newspapers say they are opposed to censorship. This bill is absolutely censorship bill. Chairman Hall opposed to any censorship bill and he is opposed to any form of censorship. Considerable discussion followed. Representative Towe moved substitute motion to amend on page 1, line 22 after the word "information" by inserting the new material "sought for purpose of publication".

Representative Marbut moved a substitute motion for all motions that House Bill 411 DO NOT PASS. Representative Brown seconded. Representatives Towe, Baucus and Greely voted no. Motion carried.

All business being concluded the meeting adjourned at 9:05 p.m.

JCH:pb


JOHN C. HALL, CHAIRMAN

SENATE JUDICIARY COMMITTEE---February 24, 1973

The committee was called to order with Chairman McKeon presiding; all members were present. The first bill discussed was HB 461.

Representative Baucus, sponsor, presented:

- 1) Senator Groff
- 2) Miles Romney, representing AFL-CIO, American Legion, Senior Citizens and Farmers Union.

Next HB 402 was discussed; Mike Greely spoke favoring passage of the bill. Also speaking were:

- 1) Representative Dorothy Bradley
- 2) Robert Miller, Secretary of the Montana Press Assoc

HB 341 was discussed and presented by Rep. Art Sheldon from Dist. 23.

- 1) Jan VanWearinger, League of Women Voters - supported bill
- 2) Frank Thompson, soil district supervisor cited several incidents of need for the bill: at Lincoln subdividing was done in one and three acre plots with poor access road; near Helena people buying subdivided land were having a difficult time finding water.
- 3) Ken Chesney, Citizens Committee at Red Lodge spoke of the lack of county control regarding subdividing.
- 4) Paul Brunner, realtor, said land is being sold in Guam and quoted a Missoula paper, 1972, on this issue. He mentioned that Oregon has passed a moratorium on land development.
- 5) Evan Denny, Assist. Professor at UM said land planning should be separated from surveying; he showed film positives of San Juan Co., Washington, where "they subdivided everything and will continue" Mr. Denny provided data for the Flathead area. When asked where he could be reached he gave the following numbers: office, 243-2761, residence, 549-8022
- 6) Hank Goetz, board member of rural school district---supported bill
- 7) Fletcher Newby, Director of Environmental Quality Council said there are 1500 acres in the North Fork of the Flathead being subdivided by a party in California.
- 8) Ex-Senator Harry Mitchell, Great Falls---supported bill
- 9) Elmer Frame, Missoula Co. surveyor spoke in behalf of Co. Commissioners.
(Senator McKeon left the meeting and Vice Chairman Gilfeather presided)
- 10) Mike Chandler, Missoula---supported and proposed amendments
- 11) Bill Cunningham, Helena---supported bill

The opponents were:

- 1) Jerome Loendorf, Montana Real Estate Boards
- 2) Floyd Brower, Roundup, spoke of subdividing tracts in the bull mountain area selling for \$150-\$350 an acre with frontage on the highway. Nixon's photographer bought 2 acres of the tract. People do not want good roads because it will cause too much interest for race track drivers.
- 3) Leslie Eskildsen, Malta

The floor was opened for questions.

The meeting was adjourned at 6:30 p.m. The next meeting is scheduled for February 26.


Luke McKeon, Chairman

Statement in support of HB 402

"AN ACT TO PERMIT NEWSMEN TO REFUSE TO DISCLOSE NEWS SOURCES"

Before the Senate Judiciary Committee of Montana, February 23, 1973

It is my firm belief that just as a free press has been the cornerstone of our Democracy, so has the press of Montana served our state well in keeping the issues for decision clearly before the people. A number of recent cases in various parts of the country have now caused many of us, however, to look again at news we have received in the past from sources who, had they been identified, might have stood to face loss of friendships or jobs or even to face criminal retribution. Many of us have thought seriously about the increasing possibility, it seems, of going to jail rather than identify those sources should someone attempt to force identification through the courts. In at least two states, newsmen have been jailed even where source "shield laws" are in effect, due to judicial interpretation of those laws. It has become clear to many responsible journalists that proposals such as HB 402 are increasingly necessary to guarantee adequate information about complex governmental decisions and policies and the problems of our nation. This stand has been adopted most recently by the National Radio-Television News Directors Association, Sigma Delta Chi Professional Journalism Society and the American Society of Newspaper Editors. Also, the Associated Press Managing Editors and the National Press Photographers Association continue to support source protection.

On February 8, 1973, the President of NBC News, Richard Wald, testified before Congress regarding the need for federal source protection such as HB 402 would provide in Montana. I quote a portion of his statement which I believe bears on a key point of opposition to such comprehensive source protection measures:

"...We agree with the observation of Justice William O. Douglas, that, 'Sooner or later, any text which provides less than blanket protection ... will be twisted and relaxed so as to provide virtually no protection at all.'

"In taking this position, we certainly do not dismiss the real public interest in law enforcement and adjudication. But the argument that places these interests above those of broad public information is generally based on hypothetical rather than real life situations. The facts of

Life typically show that justice will not suffer from protecting the news gathering function. Alternate sources of legally relevant information are generally available. And often, it is the reporting from the newsmen's confidential source that discloses information, vital to law enforcement officials, that would otherwise not have been known to them; so that drying up of these sources can adversely affect law enforcement as well as public information.

"This fact is apparently recognized by many of the nation's law enforcement officials, including Connecticut State Attorney General Killian, Houston District Attorney Carol Vance, who is also President of the National District Attorneys Association, and State Attorney for Dade County Richard E. Gerstein.

"The reasons for absolute protection apply no less on the state than on the Federal level." ...

It is my sincere hope that HB 402 will be favorably recommended by your Committee and adopted by the Full Senate as a significant contribution to the continued free flow of information to the people of a free society.

Thank you.


William F. Whitsitt
Director of News
Montana Television Network

SENATE JUDICIARY COMMITTEE---February 26, 1973

The meeting was called to order by Chairman McKeon; all members were present. The first bill discussed was HB 502. Representative Vithle, sponsor, spoke. He also introduced:

- 1) Tom Benar, Montana Assoc. Students of Bozeman. Mr. Benar also read two letters for testimony from President MacIntosh, MSU, and President Pentzer, University of Montana.
- 2) Kurt Krueger, Montana Assoc. of Students, Bozeman
- 3) Dennis Broston, Men's Residence Association, Bozeman

Opponents speaking were:

- 1) Max Worthington, Dean of Students, MSU

Senator Gilfeather moved amendments to this bill; Senator Turnage seconded the motion; and the committee adopted the amendments. (attached)
Senator Gilfeather moved that as amended this bill be concurred in; Senator Harrison seconded the motion and the committee voted that this bill AS AMENDED BE CONCURRED IN.

HB 266 sponsored by Representative Brand who spoke, was also discussed. Senator Boylan moved this bill be not concurred in; Senator Turnage seconded the motion; and the committee voted this bill BE NOT CONCURRED IN.

HB 167 also sponsored by Rep. Brand who spoke, was discussed next. Senator Turnage moved this bill be not concurred in; Senator Mather seconded the motion; and the committee voted this bill BE NOT CONCURRED IN.

HB 313 was discussed next. Representative Fastender, sponsor, spoke and introduced:

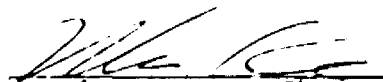
- 1) Mr. Basilwan (sp) of the Reorganization Department. He did propose one amendment and that was that this bill be effective June 30, 1973.
- 2) Doyle Saxby, Reorganization Department
- 3) Dee Cooper, Montana Education Association
- 4) Representative J. D. Lynch, Butte
- 5) Elton Hendrickson, Teacher Retirement Board

Opponents were:

- 1) Stan Gerke, Montana State Council 9--testimony attached
- 2) Larry Nachtsheim, Administrator for Public Employees Retirement System

Senator Turnage moved this bill be amended; Senator Gilfeather seconded the motion; and the committee adopted the following amendment:

I move to amend the title, page 1, line 13 by striking the "period (1)" and adding the words "effective June 30, 1973" and further amend by adding a new Section 2 to read "This act shall be effective June 30, 1973." Senator Turnage moved this bill as amended be concurred in; Senator Hall seconded the committee voted that as amended this bill BE CONCURRED IN.


Luke McKeon, Chairman

February 26, 1973 continued

HB 244 was also discussed. Representative Lynch, sponsor; spoke. Senator Gilfeather moved this bill be concurred in; Senator Mathers seconded the motion; and the committee voted this bill BE CONCURRED IN.

HB 238 Senator Turnage moved this bill be concurred in; Senator Moore seconded; and the committee voted this bill be concurred in.

HB 237 Senator Gilfeather moved this bill be concurred in. Senator Hall seconded. Senator Mathers made a substitute motion that this bill be not concurred in; Senator Turnage seconded the motion; and the committee voted this bill BE NOT CONCURRED IN.

HB 402 Senator Turnage moved that amendments proposed by Sen. McKeon be adopted; Senator Boylan seconded the motion; and the committee adopted the amendments. (attached)

Senator Moore moved that as amended this bill be concurred in; Senator Boylan seconded the motion; and the committee voted this bill AS AMENDED BE CONCURRED IN.

HB 367 Senator Turnage moved to amend the bill; Senator Harrison seconded the motion and the committee adopted the following amendments:

I move to amend Section 3, page 2, line 3 by striking the word "felony" and inserting in lieu thereof the word "misdemeanor"

And further amend Section 3, page 2, line 4 by striking the words "in the state prison"

And further amend Section 3, page 2, line 5 by striking the word and number "five (5)" and inserting in lieu thereof the word and number "one (1)"

And further amend Section 3, page 2, line 6 by striking the words and number "five thousand dollars (\$5,000)" and inserting in lieu thereof "one thousand dollars (\$1,000)"

Senator Harrison moved it be concurred in; Senator Boylan seconded, and the committee voted this bill AS AMENDED BE CONCURRED IN.

HB 453 Senator Turnage moved this bill be not concurred in; Senator Boylan seconded the motion; and the committee voted this bill BE NOT CONCURRED IN.

HB 341 Senator Turnage moved that this bill be held over until the 1974 session; Senator Boylan seconded the motion; and the committee voted this bill BE HELD OVER.

The meeting adjourned; the next meeting is scheduled for February 27.

JUDICIARY

Senate Committee

Date 2/26 House Bill No. 402 Time 6⁰⁰

	Y	N
McKeon		
Glavin		
Harbo		
Hall		
Toby		
Watts		
Wheeler		
Wicks		
Wright		

W. R. Rice W. K. McKeon
 Mary Jane Rice, Secretary Senator Luke McKeon
 Chairman

Motion: Be Conc'd

CHAPTER 691

EVIDENCE—REPORTERS' CONFIDENCE ACT

Section 93-601-1. Reporters' Confidence Act.

93-601-2. Disclosure of source of information—when not required.

93-601-1. Reporters' Confidence Act. This act shall be known and may be cited as the Reporters' Confidence Act.

History: En. Act 1, Ch. 144, L. 1942.

93-601-2. Disclosure of source of information—when not required. No persons engaged in the work of, or connected with or employed by any newspaper or any press association, or any radio broadcasting station, or any television station for the purpose of gathering, procuring, compiling, editing, disseminating, publishing, broadcasting or televising news shall be required to disclose the source of any information procured or obtained by such person in the course of his employment, in any legal proceeding, trial or investigation before any court, grand jury or petit jury, or any officer thereof, before the presiding officer of any tribunal, or his agent or agents, or before any commission, department, division or bureau of the state, or before any county or municipal body, officer or committee thereof.

History: En. Act 2, Ch. 195, L. 1942;
and, Sec. 1, Ch. 55, L. 1961.

Proposed amendments to HB 402:

- 1) add a key line to read: "93-601-2, 93-701-4" This amendment does two things: first, it provides for a key line which the House forgot to add when it amended the original bill and secondly, provides for another section of the codes which is to be amended.
- 2) In the title, line 8, after the word "sources" and before the punctuation ";" by adding the words "and information"

And further amend the title, line 8 after the numbers "93-701-4" and before the punctuation ",", by adding the word and numbers "and 93-601-2"

- 3) and further amend in Section 1, subsection 8, page 4, line 13 by adding the words "any information or" after the word "disclose"

And further amend in Section 1, subsection 9, page 4, line 22 by inserting the words "any information or" after the word "disclose"

- 4) And further amend after Section 1 by adding a new Section 2 to read as follows:

Section 2. Section 93-601-2, R.C.M. 1947, is amended to read as follows:

93-601-2. Disclosure of source of information--when not required. No persons engaged in the work of, or connected with or employed by any newspaper or any press association, or any radio broadcasting station, or any television station for the purpose of gathering, procuring, compiling, editing, dissemination, publishing, broadcasting or televising news shall be required to disclose any information or the source of any information procured or obtained by such person in the course of his employment, in any legal proceeding, trial or investigation before any court, grand jury or petit jury, or any officer thereof, before the presiding officer of any tribunal, or his agent or agents, or before any commission, department, division or bureau of the state, or before any county or municipal body, officer or committee thereof."

JUDICIARY

NAME

[illegible]

Judiciary COMMITTEE.
43rd LEGISLATIVE SESSION 1973

[illegible]

child, provided the *husband or wife* does not survive said decedent to exceed ten years.

(3) \$500 exempt, when. Property of the clear value of five hundred dollars transferred to each of the persons described in the second subdivision of section 91-4409 shall be exempt.

(4) Property without the state exempt, when. No tax shall be imposed upon any tangible personal property of a resident decedent when such property is located without this state, and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and which tax has actually been paid, secured or guaranteed, provided such property is not without this state temporarily nor for the sole purpose of deposit or safe-keeping; and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state."

Approved: March 15, 1973.

CHAPTER NO. 318

An Act to Permit Newsmen to Refuse to Disclose News Sources;
Amending Section 93-701-4, R.C.M. 1947.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. Section 93-701-4, R.C.M. 1947, is amended to read as follows:

"93-701-4. **Persons in certain relations cannot be examined.** There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1. A husband cannot be examined for or against his wife without her consent; nor a wife for or against her husband without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other; nor to a criminal action or proceeding for a crime committed by one against the other.

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of professional employment.

3. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

4. A licensed physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient.

5. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

6. Any person engaged in teaching psychology in any school, or who acting as such is engaged in the study and observation of child mentality, shall not without the consent of the parent or guardian of such child being so taught or observed testify in any civil action as to any information so obtained.

7. A counselor, psychologist, nurse, or teacher, employed by any educational institution, cannot be examined as to communications made to him in confidence by a duly registered student of such institution, provided however, that this provision shall not apply where consent has been given by the student, if not a minor, or if he is a minor, by the student and his parent or legal guardian.

8. A publisher, editor, reporter or other person connected with or employed upon a newspaper, or by a press association or wire service, or any person who has been so connected or employed, cannot without his consent be examined as to any communication made to him in confidence for the purpose of proper publication nor shall he be adjudged in contempt by a court, the legislature or any administrative body for refusing to disclose the source of any information procured while so connected or employed for publication and published in a newspaper.

Nor can a radio or television news reporter or other person connected with or employed by a radio or television station, or any person who has been so connected or employed, without his consent be examined as to any communication made to him in confidence for the purpose of proper publication nor shall he be so adjudged in contempt for refusing to disclose the source of any information procured while so connected or employed for news or news commentary purposes on radio or television."

Approved: March 15, 1973.